

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
AIKEN DIVISION

Johnnie Frazier,

Petitioner,

v.

Warden of Lieber Correctional Institution¹,

Respondent.

C/A No. 1:18-1511-CMC

Order

This matter is before the court on Petitioner's *pro se* "motion for rehearing" on his petition for writ of habeas corpus, filed in this court pursuant to 28 U.S.C. § 2254. ECF No. 40. It appears Petitioner intends this motion to be one for reconsideration of the court's order dismissing his § 2254 petition. He argues the computation of the statute of limitations was incorrect and therefore his Petition was timely, because the Report noted he did not file a request for rehearing on his appeal yet he has an order from the South Carolina Court of Appeals denying his petition for rehearing.

Based on this filing, the court ordered Respondent to advise the court whether Petitioner filed a motion for rehearing in the South Carolina Court of Appeals and, if so, when it was denied. ECF No. 41. Respondent confirmed Petitioner had filed a timely request for rehearing via South Carolina Court of Appeals records, which was filed September 2, 2010 and denied March 25, 2011. ECF No. 43. Therefore, Respondent notes, the previous calculations regarding the statute of limitations for Petitioner's § 2254 Petition were incorrect, and the Petition filed under the above

¹ Petitioner notes he is now housed at Perry Correctional Institution.

Case Number was timely filed within the one year statute of limitations. *Id.* Respondent attached the Court of Appeals motion for rehearing and denial. ECF Nos. 43-1, 43-2. Therefore, Respondent does not oppose re-opening this action.

Accordingly, as the statute of limitations was erroneously calculated and the Petition dismissed in error for that reason, the court will grant Petitioner's motion (ECF No. 40) and reopen the case. The case is rereferred to the Magistrate Judge for further pretrial proceedings.

IT IS SO ORDERED.

s/Cameron McGowan Currie
CAMERON MCGOWAN CURRIE
Senior United States District Judge

Columbia, South Carolina
September 22, 2020